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12/07/2000

David J. Wilson

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07/13/2006

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EXAMINER

MANIWANG, JOSEPH R

ART UNIT

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/731,019
Filing Date: December 07, 2000
Appellant(s): WILSON, DAVID J.

Larry J. Johnson (Reg. No. 56,861)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 05/03/06 appealing from the Office
action mailed 06/21/05

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

NOWTHIS.COM, blog entry, Nov 24, 1999

WWW.EPINIONS.COM, Oct 12, 1999

6,230,185	SALAS ET AL.	5-2001
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5,950,172	KLINGMAN	7-1996
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(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Official Notice using MPEP § 2144.03

As previously asserted, the concern for limiting a person/voter with one, and only one vote, has been a concern since the earliest of elections known to mankind. Any discussion of truly democratic proceedings necessarily involves the equivalence of all individuals casting votes or opinions, and the limiting of input from each individual to a single, concrete position.

In light of the environment in which the claimed invention operates, it is noted that Internet technology was routinely engaged with gathering input/opinions from users of the network, as clearly and unambiguously described by the prior art of record, both applied and otherwise.

Examiner takes Official Notice (see MPEP § 2144.03) that mechanisms for limiting voting/opinion inputs by the same user/person/individual/etc. to a single, definitive position, implemented in a computer networking environment was well known in the art at the time the invention was made. While specifics as to how these mechanisms operated are not at issue, there were various well known mechanisms limiting input to a single entry from a particular individual which were common in the art, including, identification of the individual by identification number(s) (inter alia, U.S. Pat. No. 5,950,172, column 10, lines 58-61), filtering by network address (inter alia, U.S. Pat. No. 6,362,837, column 5, lines 51-55), and biometric or other “physical” measurement characteristics to ensure individuality (inter alia, U.S. Pat. No. 5,875,432), column 4, lines 4-8), to name only a few. Another widely common method was requirement for an individual to “login” or otherwise identify themselves to the network so actions could be tracked, recorded, and managed by network administrators. See, inter alia, U.S. Pat. No. 6,772,139, column 17, lines 20-39.

It is noted that if functionality outside the realm of this discussion is being addressed by Applicant, serious issues of enablement under 35 U.S.C. § 112 may arise. Even using any of the above recited mechanisms, there are serious questions about how “...indications does not exceed one indication for the review from the user” can be properly ensured, without counting individual hands at a physical meeting of the “users”. To determine, over a network, whether a particular “user” has only indicated (i.e., voted, reviewed, etc.) something once (only one time), would have raised some serious questions of actual identification of each distinct [network] user and [potential]

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verification of this fundamental determination in order to ensure each user only submitted information once. One of ordinary skill in the art would have recognized that undue experimentation would have been required to provide the level of verification seemingly asserted by Applicant in the response, given a direct, literal reading of the claim limitations.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 and 7-17 are rejected under 35 U.S.C. 102(a) as anticipated by NOWTHIS.COM (NOWTHIS.COM, blog entry, Nov 24, 1999), hereinafter referred to as Nowthis, or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nowthis.

Nowthis disclosed, specifically, Amazon.com having implemented “x people found this review helpful. Y did not. Was it helpful to you? [YES] [NO]”. See page 2. This specifically provided interactive element features as claimed, count tabulation, and

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since the sentence references "x people", it must be presumed that each person is entitled to only a single vote, since a second vote from the same person would not increase the number of "people" referenced.

In the alternative, Nowthis may have been construed not to have expressly recited the provision for "incrementing a count of a stored number of indications for the review if the stored number of indications does not exceed one indication for the review from the user", as claimed. That is, without this presumption that "x people" references distinct, individual persons, the reference may be construed to lack evidence to prove the count was incremented only when a user reviews something for the first time.

As discussed above in regard to Official Notice using MPEP § 2144.03, mechanisms for limiting users to a single input were notoriously well known in the art. Since the reference specifically disclosed "x people" (as opposed to "x votes"), the inclusion of functionality to preclude a "people" or "person" to a single submitted entry would have been obvious to one of ordinary skill in the art at the time of invention, since the reference specifically disclosed "Was it helpful to you?" (noting individual questioning), and "X people found this review helpful...Y did not" (noting individually submitted answers). Any minimally skilled information gatherer dealing with surveys, voting, polls, etc, would have been motivated to ensure that the same "person" casting multiple votes be thwarted in order to maintain integrity of the survey, election, poll, etc.

It would have been obvious to one of ordinary skill in the art at the time of invention to modify the broadly described Nowthis functionality in use by Amazon.com

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with any known provision to limit the number of votes from a particular individual to one, and only one, simply in order to maintain integrity of the poll.

Claims 1-2 and 7-17 are rejected.

Claims 1-2 and 7-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Epinions (WWW.EPINIONS.COM, Oct 12, 1999), hereinafter referred to as Epinions, in view of Salas et al. (U.S. Pat. No. 6,230,185), hereinafter referred to as Salas.

Epinions taught a method for identifying valuable product/service reviews review(s) as being helpful as evidenced by the "Rating Summary", reporting "Rated Very Useful by:", and "Rated Useful by:", displaying further degrees of usefulness. See pages 9 and 10. The total number of reviews which were available for review by a user was tabulated, and reported, additionally, for each individual degree of usefulness. Since both percentage and actual review voting tabulation was evident, the presence of the number of indications was clearly evident. See prior Office action(s) for particular limitation mapping to the applied art. The provision for an "interactive element" was included in the broad teachings as set forth by Epinions, since the invention operated in a typical GUI, and Internet browser application. The application itself was an interactive element which accepted and effected input from user clients. Since the review, voting, and all other user input came from a user, the "interactive" functionality of the interface is inherent.

While Epinions disclosed the invention substantially as claimed, Epinions did not expressly disclose the prohibition of a user to indicate usefulness of a review only once. That is, Epinions did not expressly disclose the incrementing of a count only when "the number of indications does not exceed one indication from the user." However, since Epinions gathered voted opinions and was enabled for usage in a typical Internet browser application, and utilized well known and widely implemented HTML markup language for presentation dictation, an ordinary artisan would have been motivated to search the related arts to isolate teachings dealing directly with web page technology which disclosed specifics of voting mechanism(s) available at the time of invention.

In the same art of network based information gathering from individuals, Salas specifically disclosed a voting/polling mechanism utilized in typical HTML documents acting to optionally limit input from particular user(s) to one (1). See, inter alia, column 16, lines 33-54. Specific limiting of one member to one vote was expressly found at column 16, lines 51-54.

Since Epinions was implemented in an Internetworking environment, utilized typical Internet browser end user software for user input, and used HTML to present and gather information with network end users, the modification of the base system as disclosed with the HTML based polling mechanism provided by Salas would have been a matter of routine, and would have been obvious to one of ordinary skill in the art at the time of invention. Minimally, motivation for this modification would have been the implementation of voting features specifically disclosed by Epinions, fully enabled and described by Salas.

Thus, the reviewing of posted reviews, maintaining the reviews, counts of the reviews, and reviews of the reviews, along with the provision for limiting the number of valid voting opportunities for a particular user was fully disclosed by the combination of Epinions and Salas.

Claims 1-2 and 7-17 are rejected.

Claims 1-2 and 7-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klingman (U.S. Pat. No. 5,950,172), hereinafter referred to as Klingman.

Klingman disclosed maintaining records of user reviews retrieved over a network (see, inter alia, column 12, lines 9-18), display of these records in order to help users determine whether or not to purchase products/services (see, inter alia, column 4, lines 35-39; column 9, lines 8-198; column 12, lines 9-18; column 16, lines 28-32), incrementing a count of indications (see, inter alia, column 12, lines 9-30), limiting indication(s) to one indication (see, inter alia, column 8, lines 21-27; column 10, lines 58-61; column 23, lines 20-24), and displaying the information (see, inter alia, column 12, lines 9-18; column 22, lines 50-54). Klingman was also disclosed as implemented in a typical networking environment using standard Internet technology. See, inter alia, column 15, lines 49-59.

While Klingman disclosed the invention substantially as claimed, Klingman did not expressly disclose the reviewing of reviews. Klingman related to the reviewing of products and services. See, inter alia, column 4, lines 20-28. Klingman specifically disclosed the selective indication of users which were considered "most qualified" to

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rate the products/services. See, inter alia, column 15, lines 35-47. Thus, an ordinary artisan would have been motivated to explore the related arts for methods for determining which reviews or reviewers were more or less valuable to potential buyers of merchandise.

Since Klingman specifically mentions reviews of particular users were more valuable than others (as above, inter alia, column 15, lines 35-47), and the “desirability of a more multi dimensional scoring mechanism” when reliant upon “respondents being mostly from a group of people [had/had no] interest...” (see column 12, lines 31-51), the ordinary artisan would have been motivated to better measure the weight of each review (also see, inter alia, column 12, lines 9-17), and the processing advancements in the art to better measure interest in products/services through a wide variety of processing algorithms including review of the review numbers themselves (see column 12, line 64 through column 13, line 31), it would have been obvious to modify the system of Klingman to review the reviews (using the same methodology) in order to better gauge the effectiveness and accuracy of the reviews. See, inter alia, column 13, lines 27-31.

Claims 1-2 and 7-17 are rejected.

(10) Response to Argument

The Appellant argued in substance that:

Issue 1: the rejection of claims 1-2 and 7-17 under 35 U.S.C. 102(a) or in the alternative 35 U.S.C. 103(a) based on NOWTHIS.COM (NOWTHIS.COM, blog entry, Nov 24, 1999), hereinafter referred to as Nowthis, should be reversed.

Regarding claim 1, Appellant argues on page 10 that Nowthis does not specifically disclose “x people” as stated in the rejection, and that it instead discloses a blog entry that states “1 people”. Aside from this statement, Appellant has provided no explanation to the relevance of this position. Examiner thus reiterates the grounds of rejection in which it was asserted that the cited portion of the Nowthis reference clearly disclosed the claimed concept of displaying a count of indications that a user (i.e., “person”) has found a review helpful (see Nowthis, p. 2). The disclosure of displaying a tabulation of how many people (i.e., “x people”) found a review helpful clearly and without a doubt reads on the broad language of the claims. An argument that the reference does not teach the term “x people” as used in the rejection is irrelevant, and the use of such a conceptual term would have been readily understood by one of ordinary skill in the art in describing the teachings of Nowthis.

Further to Issue 1, Appellant asserts on pages 10 and 11 that Nowthis appears “to be nothing more than speculation as to text that could conceivably be included in a user interface”. It is essentially the position of Appellant that the reliance by Examiner on the disclosure of Nowthis is based in conjecture. Examiner submits however that the teachings of Nowthis are clear as to text that could be included in a user interface and in fact disclose the claimed invention. It would have been understood by one of ordinary skill in the art that the disclosure of Nowthis was evidence that the claimed invention

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was not novel, as the text of Nowthis specifically provided conceptual disclosure of interactive element features as claimed. The reference relied upon is enabling in that it put the public in possession of the claimed invention, and is thus a valid reference.

Further to Issue 1, Appellant states on page 11 that Appellant “fails to see the relevance to taking official notice under MPEP § 2144.03”. Examiner submits that the relevance of the Official Notice is to state what was well known at the time of invention. Although Appellant asserts that the teachings described in the Official Notice “is a limitation of a claim, not an irrefutable long standing fact as contemplated by an Official Notice”, Examiner submits that such an argument is merely a “bald challenge, with nothing more” as it does not contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice. See *In re Boon*, 439 F.2d 724, 169 USPQ 231 (CCPA 1971). Examiner maintains the position that the teachings described in the Official Notice and supported by the prior patents cited by Examiner and acknowledged by Appellant were well known at the time of invention. Although Appellant states “there certainly are other voting schemes that give people more than one vote”, Appellant has provided no evidence to support this assertion, and it is thus inadequate in providing reasoning as to why the noticed fact is not considered to be common knowledge or well known in the art. Additionally, such a voting scheme granting people more than one vote would not rule out the notion that a system granting one person one vote was well known at the time of invention.

Issue 2: the rejection of claims 1-2 and 7-17 under 35 U.S.C. 103(a) as being unpatentable over Epinions (WWW.EPINIONS.COM, Oct 12, 1999), hereinafter referred to as Epinions, in view of Salas et al. (U.S. Pat. No. 6,230,185), hereinafter referred to as Salas, should be reversed.

Appellant argues on page 13 that modification to Salas would yield a system "unsatisfactory for its intended purpose". Examiner submits that this discussion of Salas is unclear, and further addresses a reasoning for combining the references that was not relied upon by Examiner in rejecting the claims under 35 U.S.C. 103(a). Examiner reiterates that in the rejection, Epinions is modified by the teachings of Salas, which is relied upon for teaching an HTML-based system for limiting input of a particular user to one vote (see column 16, lines 33-54). As stated in the rejection, such a teaching would have been useful in the system of Epinions, which as acknowledged by Appellant, related to rating the helpfulness of a review. The fact that Appellant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Further to Issue 2, Appellant argues on page 13 that the motivation to combine the references comes from impermissible hindsight. In response to Appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time

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the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). While Appellant argues that in Salas there is nothing that indicates that limiting the user to one vote is applicable to rating the usefulness of product/service reviews, Examiner submits that Salas nonetheless relates to HTML voting/polling mechanisms for limiting a user to one vote. Examiner further submits that a "product/service review" as argued is not defined in the claim, and that such a broad limitation is read upon by the teachings of Salas, which are applicable to reviews in general. Thus, the combination of teachings of Salas and Epinions is motivated and possible taking into account only knowledge at the level of HTML-based voting systems, which would have been available to one of ordinary skill in the art as argued in the rejection of the claims.

Further to Issue 2, Appellant argues on page 14 that Salas does not disclose or suggest the voting on a usefulness of a product/service review. Examiner submits that as noted above, Salas is not relied on for such a teaching but instead relied upon for teaching an HTML-based system for limiting input of a particular user to one vote (see column 16, lines 33-54). Appellant's arguments against the references individually do not show nonobviousness. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Issue 3: the rejection of claims 1-2 and 7-17 under 35 U.S.C. 103(a) as being unpatentable over Klingman (U.S. Pat. No. 5,950,172), hereinafter referred to as Klingman, should be reversed.

Appellant asserts on page 15 that it would have not been obvious for an artisan to modify the teachings of Klingman. However, Examiner submits that as detailed in the rejection of the claims, the explicit mention that reviews of particular users were more valuable than others (see column 15, lines 35-47), and the "desirability of a more multi dimensional scoring mechanism" when reliant upon "respondents being mostly from a group of people [had/had no] interest" (see column 12, lines 31-51), one of ordinary skill in the art would have been motivated to better measure the weight of each review (see column 12, lines 9-17), and it would have been obvious to modify Klingman to review the reviews using the same methodology disclosed in order to better gauge the effectiveness and accuracy of the reviews (see column 13, lines 27-31).

(11) Related Proceeding(s) Appendix

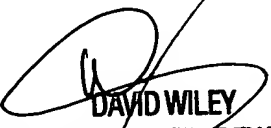
No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

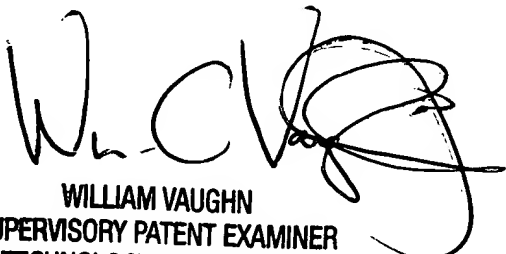
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Examiner Joseph Maniwang

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